M.D.T.E. No. 1062-B

Massachusetts Electric Company and Nantucket Electric Company
Default Service Adjustment Provision Tariff

Comments of the Union of Concerned Scientists,
Massachusetts Public Interest Research Group,
Clean Water Action, and Conservation Law Foundation
November 26, 2003

We welcome this opportunity to submit comments to the Department of Telecommunications and Energy ("Department" or "DTE") regarding the proposed default service adjustment provision tariff, M.D.T.E. No. 1062-B. These comments are submitted by the following organizations:

A. THE UNION OF CONCERNED SCIENTISTS

The Union of Concerned Scientists ("UCS") is an independent nonprofit alliance of more than 100,000 concerned citizens and scientists working for practical environmental solutions. For more than three decades, UCS has combined rigorous analysis with committed advocacy to reduce the environmental impacts and risks of energy. UCS' energy program focuses on encouraging the development of clean and renewable energy resources, such as solar, wind, geothermal and biomass energy, and on improving energy efficiency. Participating in the design and implementation of state renewable policies is one way UCS actively works toward these ends. UCS is interested in promoting the public interest, which is served by a reliable and efficient regional electricity market broadly defined. UCS is submitting the following comments in this proceeding because it represents interests that will be directly affected by the outcome of this proceeding.

B. MASSACHUSETTS PUBLIC INTEREST RESEARCH GROUP

The Massachusetts Public Interest Research Group ("MASSPIRG") is a statewide public interest organization with 55,000 members across the Commonwealth. MASSPIRG's mission to deliver persistent, result-oriented public interest activism that protects our environment, encourages a fair, sustainable economy, and fosters responsive democratic government. Since 1972, MASSPIRG has worked on a range of consumer and environmental issues including energy policy matters. In light of our mission and our many members, including thousands who are in Massachusetts Electric's service territory, who will be directly affected by the decisions made pursuant to this proceeding we represent a perspective that should be represented. MASSPIRG moves to comment in this investigation because it represents interests that will be directly affected by the outcome of this proceeding.

C. CLEAN WATER ACTION ALLIANCE OF MASSACHUETTS

Clean Water Action is a national citizens' organization working for clean, safe and affordable water, prevention of health-threatening pollution, creation of environmentally safe jobs and businesses, and empowerment of people to make democracy work. Clean Water Action organizes strong grassroots groups, coalitions, and campaigns to protect our environment, health, economic well-being, and community quality of life. Clean Water Action is active is 25 states

and has 700,000 members nationally. We represent 40,000 members in Massachusetts and have offices in Boston and Northampton, MA. One of Clean Water Action's major issue areas is the environmental impacts of electric power generation.

D. CONSERVATION LAW FOUNDATION

The Conservation Law Foundation works to solve the environmental problems that threaten the people, natural resources and communities of New England. CLF's advocates use law, economics and science to design and implement strategies that conserve natural resources, protect public health, and promote vital communities in our region. Founded in 1966, CLF is a nonprofit, member-supported organization. It has regional advocacy centers in Boston; Montpelier, Vermont; Concord, New Hampshire; Providence, Rhode Island and Rockland, Maine. CLF maintains an extensive website at www.clf.org. CLF was deeply involved in the restructuring of the electricity sector in Massachusetts and has long advocated for continued improvement in air quality from that sector. Most recently, CLF has focused on the threat of global warming and the need to deploy large-scale renewable energy sources in order to address this threat. These concerns are implicated by the issues under review in this proceeding.

I. Summary

These comments focus on the proposed default service adjustment provision for Massachusetts Electric and Nantucket Electric. In particular, these comments address the inclusion of the "cost of acquiring renewable energy certificates or remitting Alternative Compliance Payments to comply with the [Massachusetts] renewable portfolio standards…" in the provision of default service.

Prudently incurred costs in complying with the RPS requirement should be recovered in rates. However, RPS compliance costs, like other costs passed on to ratepayers, must undergo a careful review for prudence.

The recovery of those costs should be judged against the RPS-obligated entity's efforts to plan its resource portfolio to meet the RPS requirement. The intent of the alternative compliance payment (ACP) mechanism in the RPS is to serve as a backstop for companies in the event that available supplies do not increase to meet the RPS target or as a *de facto* price cap in the event that no eligible renewable energy certificates are available at or below the $50/MWh ACP. Consumers should not be forced to bear the cost of a $50/MWh premium for the ACP if the RPS-obligated entity has not proven that it has planned for and taken sufficient measures to meet the RPS requirement through the direct procurement of eligible renewable resources, including through long term commitments.

Here we address in more detail our views on the following:

- ?? the use and pass-through of the ACP
- ?? the role of long-term contracts for renewable resources
- ?? the availability of renewable certificates at well below the ACP

II. Background

In passing the Restructuring Act, 1997 Mass. Acts 164, the legislature determined that development of renewable generating capacity was an essential component of electric industry restructuring. To that end the legislature created the RPS, as well as the Renewable Energy

Trust, in order to spur the development of renewable resources in Massachusetts and New England. The Department's implementation of certain policies (e.g. regarding Information Disclosure), and coordination with other State agencies on other policies and programs (RPS, GPS, and generation information system), reflects the interrelated nature of initiatives contained in the Restructuring Act. While the Department is not directly responsible for all of the Restructuring Act's policies, its decisions will affect the State's success in achieving those objectives.

The above organizations direct the Department's attention to our comments submitted under D.T.E. 02-40 for a detailed description of our perspectives regarding the importance of the Department's regulation of default service procurement practices for compliance with the Renewable Portfolio Standard. In those comments, we presented our support for requiring Massachusetts Electric, Nantucket Electric, and all other load serving entities with RPS obligations to meet their obligation in a way that ensures the most efficient outcome for consumers.

In its April 2003 order on Docket No. 02-40, DTE acknowledged that approaches to RPS compliance by default service and standard offer providers will have "significant impact" on the market for RPS certificates (page 45). Accordingly: "DTE directs each distribution company, in all future default service and standard offer service filings, to fully describe the manner in which it has complied, or intends to comply with its RPS obligations." DTE committed to review company filings "to ensure that the distribution companies take appropriate steps to minimize RPS compliance costs." DTE did not require long-term contracts for RPS compliance, but allowed that companies may seek approval from DTE for such long-term contracts if they provide an efficient way for it to comply with RPS requirements.

As highlighted in our previous comments, we continue to urge the DTE to use policy tools within its jurisdiction to reinforce the efficient implementation of the RPS and request that the Department issue an order that establishes a framework in which ample renewable energy supply can develop under regulatory certainty. We believe that the Department should use its regulatory powers to pro-actively ensure that all load-serving entities under DTE's jurisdiction should use all reasonable methods, including but not limited to requests for proposals and long-term contracts to secure renewable resources sufficient to meet their obligations under the RPS at the lowest cost.

III. Use of the Alternative Compliance Mechanism

One of the major points of our comments here and in D.T.E. 02-04 relates to the potential over-reliance on the Alternative Compliance Payment mechanism of the RPS. The result would be to undermine the RPS while also passing along excess costs to consumers. Before the Department considers allowing load-serving entities to flow ACP costs through to default service customers, we strongly believe that the Department should require such companies to meet a high standard of proof that there was no other less expensive compliance approach available to them, and disallow the pass-through of ACP costs if the companies have not met the high standard. Allowing load-serving entities to pass ACP costs on to consumers in the absence of meeting such a test would only encourage companies to avoid the effort and transaction costs of investigating whether there are lower cost short-term and long-term options. As a result, ratepayers would

likely have to pay the full $50 per MWh, and fewer renewable energy projects would be built in a timely manner.

We request the following change to the language in the proposed tariff:

"...acquiring renewable energy certificates or*, if the Company proves to the satisfaction of the Department by a preponderance of all available evidence that it has undergone a thorough effort to identify and secure certificates, but that no certificates are available in either short-term markets, or available through signing long-term contracts for certificates or certificates and energy from renewable project developers, from third parties, or from the Massachusetts Renewable Energy Trust, for a lower cost,* remitting Alternate Compliance Payments to comply with the renewable portfolio standards established in Mass. Gen. Laws c. 25A, § 11F and 220 C.M.R. 14.00 et seq."

We also request that the Department make available to interested parties the documentation the RPS-obligated companies submit to DTE describing their approach to ensuring RPS compliance at the lowest cost to consumers as well as all filings that demonstrate to the Department the results of their efforts to comply with RPS requirements in the most efficient and cost effective manner. Before allowing any distribution company to recover the cost of RPS compliance, they should be required to seek pre-approval from the DTE, demonstrating that they have made thorough efforts to secure less expensive certificates in short-term and long-term markets. There should be a rebuttable presumption that less expensive options are available, with the burden of proving otherwise on the company. The Department should require pre-approval because customers paying the higher ACP charges are unlikely to be made whole through refunds in post hoc disallowances; and most importantly, because the environmental, diversity, and security benefits that would be lost through delay in developing the renewable resources can never be recaptured.

IV. Long-term Procurement of RPS Compliance

RPS-obligated companies must be required to examine the costs and benefits of long-term procurement of renewable energy certificates (RECs) to minimize long-run costs. We have advocated for making long-term renewable purchases (RECs, energy or both) a requirement. Such an approach would in turn create market certainly for renewable energy suppliers, especially those considering investing in new RPS-eligible generating facilities. This market certainty would send a signal to build and enable long-term project financing at favorable rates, directly resulting in more renewable energy development and lower RPS compliance costs. The current practice of achieving RPS compliance by relying on default service suppliers responding to requests for proposals in one-year increments is unlikely to produce an efficient result.

It is our opinion that the potential for a shortfall of RPS-eligible certificates exists precisely because companies with RPS obligations have not entered into forward contracts with eligible generators. Common sense as well as the historical evidence tells us that few renewable generators, which are capital-intensive, can build “on spec” without a committed revenue stream. (Please see our comments on Docket No. 02-40 for a more detailed discussion of this point.)

We believe that long-term contracts, prudently procured, are an important aspect of the proper way to comply with the RPS. The California Public Utilities Commission (CPUC) examined testimony submitted by UCS and others on the costs and benefits of requiring long-term contracts in its recent RPS rulemaking, and ruled:

> Consistent with the SDGE&/TURN proposal, the utilities should seek bids for 10, 15, and 20-year products. The proposals of SCE and PG&E to seek shorter–term (five-year and one-year) products do not appear likely to promote development of new renewable resources. (Decision 03-06-071, June 19, 2003 at 58, Rulemaking 01-10-024)

The risks of a utility "getting stuck" with excess procurement costs when entering into long term arrangements with renewable generators are mitigated by two facts: prudently incurred RPS compliance costs can be passed on to consumers, and RECs are a fungible commodity. If an RPS-obligated company has incorrectly predicted its RPS compliance requirements, the RECs can be reassigned or sold to another RPS-obligated entity in need or to a green power marketer. The uncertainty associated with determining exactly how many certificates a company will need to comply with the RPS in a future year should not be an impediment to requiring REC purchases for at least some significant portion of RPS obligation through forward contracts.

V. Availability of RECs Priced Below the ACP

The RPS-obligated companies have known for five years that they would have an obligation to provide a minimum amount of renewable energy to their customers. Chapter 164 of the Acts of 1997 (the Utility Restructuring Act) passed in November of 1997 included the requirement to provide an increasing amount of new clean renewable energy. While there was some uncertainty about implementation details until regulations were finalized, and it would not be reasonable to expect contracts to be signed before then, all distribution companies have had years to become familiar with the renewable energy market, and projects under various stages of development. They have had more than half a year since the Department decision authorizing long-term contracts to conduct RFPs for certificates or certificates bundled with energy.

There is evidence that renewable energy certificates can be purchased for substantially less than the ACP payment of $50 per MWh. We are aware of several bilateral contracts between generators and purchases for prices significantly less than $40 per megawatt-hour (MWh). Some market participants have stated that long-term contracts with wind generation and landfill gas facilities would result in REC prices of approximately $25 per MWh.

In the fall of 2003, the Massachusetts Technology Collaborative (MTC) accepted proposals for its Massachusetts Green Power Partnership (MGPP) program. In MGPP, MTC expressed a willingness to support new renewable energy projects, chosen through a competitive process, by offering long-term certificate price guarantees, either by entering into direct purchase agreements or put option agreements. According to MTC, eleven (11) generators filed applications and five (5) have been selected. This data will soon be made available to the public. We believe that it will prove that certificates can be purchased for prices significantly less than $30 per MWh.

While it is not yet clear if there will be a sufficient number of certificates available to meet full compliance for every company in the 2004 to 2006 timeframe, giving any company a blank check to flow through ACP payments without first conducting an RFP for long-term certificates, will only make it much more likely that projects will not be developed and that a sufficient number of certificates will not be available in that period, raising compliance costs and undermining the objectives of the RPS.

As part of its deliberations over the prudence of RPS compliance costs proposed to be passed through to consumers, DTE should review the data supporting these examples of the availability of RPS-compliant renewable certificates, as well as company actions to comply with the RPS.

Thank you for your consideration of these important matters to ensure both that the RPS achieves its intended objectives and that they are achieved at the lowest cost.

VI. Communications

All communications, correspondence, and documents related to this matter should be directed to the following people.

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